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C O N F I D E N T I A L SECTION 01 OF 02 KABUL 000210

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SUBJECT: AFGHAN PUBLIC: STRONG SUPPORT FOR THE DEATH PENALTY

REF: 08 KABUL 2833

Classified By: DCM Christopher Dell for reasons 1.4 (B) and (D)

11. (C) SUMMARY. Although most Afghans strongly support the death penalty, Afghan human rights activists and other civil society actors have called on the government to halt executions, arguing rampant corruption in the law enforcement system and lack of judicial capacity to adequately administer Afghan law prevents the government from fairly applying the death penalty. A number of foreign missions have also raised concerns with Afghan authorities over due process and the death penalty itself. President Karzai, who must approve all executions, is reportedly declining to review 85 pending death penalty cases, likely waiting for particularly strong, high-profile cases that will garner popular support and undercut any objections from local and international critics.

In an election year where security tops the list of voters' concerns, the Afghan government is unlikely to weaken its stance on this issue.

Execution Figures

12. (SBU) In November 2008, the Afghan government executed 16 people for crimes including murder, rape, and kidnapping. Of the 16, Afghan authorities executed 13 people in Kabul's Pol-e-Charki prison. On November 10, one person each in Jowzjan, Takhar, and Herat Provinces was executed. Courts convicted these people of crimes including murder, sexual abuse, kidnapping, and activities linked to terrorism.

13. (C) An official in the Office of the President told poloff that President Karzai has no current plans to review the 85 death penalty cases pending his signature. (The standard procedure is for Karzai and officials from the Attorney General's Office, Ministry of Justice, and Supreme Court to meet to review pending death penalty cases.) The Director of Law Enforcement in the Office of Administrative Affairs (OAA) thought the President was unlikely to approve executions for pending cases in the foreseeable future. He believed that Karzai was waiting for new files, particularly those of the men who threw acid on the Kandahar schoolgirls. The OAA official suggested that Karzai was looking for high-profile death penalty cases with strong public support, making it difficult for the international community to protest publicly.

Afghan Public: Death Penalty is Necessary and Effective

14. (SBU) The overwhelming majority of Afghans support the death penalty as a deterrent to crime and an effective means to short-circuit the corruption they believe allows many convicted criminals to avoid justice. The public believes -

not without some cause - that many prisoners escape or bribe their way out of jail. A palace official asserted the death penalty is politically necessary in the short term because the Afghan public is demanding decisive action from the government in combating crime. A Kabul police officer acknowledged the Afghan judicial system was flawed, but contended the flaws were not severe enough to justify suspension of executions, particularly for murderers.

¶5. (SBU) Support for expanding the use of the death penalty runs deep in Parliament and encompasses a variety of factions. Northern MPs view it as a deterrent against terrorism, while religious fundamentalists advocate more capital punishment for perceived crimes against Islam. Many women MPs would like to see legislation with more severe punishments for domestic violence, to include the death penalty as an option. Parliament's small number of secular liberals, most of whom have studied or lived in Europe, likely have personal reservations about the death penalty, but none have dared to speak against it publicly.

Human Rights Activists: Swimming against the Tide of Public Opinion

¶6. (SBU) The Afghan Independent Human Rights Commission (AIHRC) supports a moratorium on executions, arguing the Afghan judicial system does not meet international standards. However, the AIHRC is under tremendous public pressure to change its position and notably did not publicly oppose the November executions. Afghans, tired of the high rate of criminality and perceived lack of accountability for criminal

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actions, accuse the AIHRC of protecting criminals when it speaks out against capital punishment.

¶7. (SBU) The AIHRC identified two November 29 executions of particular concern: Noor Ahmad who was 17 at the time he allegedly committed armed robbery and murder, and a police officer for allegedly facilitating (rather than actively participating in) the same crime. More generally, the AIHRC is troubled by due process problems such as lack of evidence and confessions obtained by torture.

¶8. (C) Aziz Rafiee, Director, Afghan Civil Society Forum, (ACSF) (which includes 157 civil society organizations), opposes the death penalty here for two reasons. First, he contends that an overwhelming majority of Afghanistan's judges and other legal professionals are corrupt and make their decisions based on payoffs. Second, due to insecurity in much of the country, witnesses cannot go to court to testify for defendants and law enforcement cannot properly gather evidence. Rafiee claimed that at least two of the 15 prisonersexecuted in October 2007 at Pol-e-Charki did not commit the crimes for which they were convicted. According to Rafiee, Karzai told him confidentially that he now believed ordering those two executions was a mistake.

¶9. (SBU) M. Afzal Shurmach Nooristani, defense lawyer for Sayad Parwez Kambakhsh, (reftel) acknowledges and respects the death penalty as part of Afghan law but does not believe the recent executions complied with the law. He contends that most judicial decisions have no connection with true guilt or innocence because of rampant corruption in the judicial system and torture during interrogations.

Diplomatic Reactions: Opposed to Executions; Different Approaches

¶10. (SBU) UNAMA also argues for a moratorium on executions due to ongoing law enforcement and judicial system concerns, including corruption and lack of capacity. It has called on Karzai to include the AIHRC in the final review of death penalty cases. UNAMA has also called on the government to

inform families of the condemned prior to the executions and to permit the AIHRC to monitor the executions.

¶11. (C) The French EU Presidency, the EU Special Representative, and Norway released a joint statement on November 12 re-stating their "total opposition to the death penalty." The Canadians declined a request from the EU to join in signing this statement. Canadian authorities preferred to raise their opposition to the executions in bilateral meetings, hoping a discreet approach will prove more effective. During the December 3 EU Heads of Missions meeting with Foreign Minister Spanta, the French Ambassador outlined the EU's position against the death penalty and reiterated a call for due process and fair trials in Afghanistan.

Comment

¶12. (SBU) As the AIHRC's inability to denounce the executions shows, Afghan officials are under tremendous political and public pressure to take a tough stance on criminal cases. The Afghan public's overwhelming support for the death penalty, well-known to Karzai and other politicians, creates the potential for executions to be used to shore up political support during an election year. The popular response to executions also in part seems from a desire to see strong leadership in any form from Karzai. At the same time, inadequacies in the judicial and law enforcement system raise legitimate concerns about the capacity of Afghanistan's legal system to apply the death penalty fairly and consistently. We will continue to work closely with Afghan authorities to strengthen rule of law practices in a long-term effort to address these concerns.

WOOD